IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/09/2003

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THE HONOURABLE MR. JUSTICE A.K.RAJAN

WRIT PETITION No.11189 OF 2000

Management
The Madurai District Central Co-operative
Bank Ltd.,
Madurai, represented by its
Managing Director C.Rajendran. .. Petitioner.

-Vs-

1. The Joint Commissioner of Labour,
Appellate Authority under Payment of
Gratuity Act, 1972,
Anna Nagar (East),
Madurai - 625 020.

2. The Assistant Commissioner of Labour,
5/2 Kootaravu Maligai,
Anna Nagar East,
Madurai - 625 020.

3. C.Viswanathan .. Respondents.

Petition filed under Article 226 of the Constitution of India
for the issue of a writ of certiorari mandamus as stated therein.

For petitioner : Mr.S.Silambanan

For 3rd respondent : Mr.P.L.Narayanan,

:ORDER

This writ petition has been filed for the issue of a writ of
mandamus calling for the records of the first respondent dated 12.05.2000
pertaining to P.G.A.82/99 and to quash the same.

2. The brief facts of the case for the disposal of the writ
petition are as follows:-
The third respondent was working as a General Manager. Against him
certain charges were framed and subsequently all the charges were withdrawn
after full enquiry. Since he has not received the service benefits, he filed

a writ petition in W.P.No.66 f 1999. According to the petitioner, by order of this Court all the service benefits due to the third respondent was settled. In the meanwhile, there was a settlement under Section 12(3) of the Industrial Disputes Act, (hereinafter called "the Act") be tween the petitioner herein and the Union which also includes Officers. In that settlement, there are various agreements under Section 12(3) of the Act with respect to the Payment of Gratuity Act. There is a change in the settlement under Section 12(3) , to the benefit of the employee. The third respondent claims gratuity settled under Section 12(3) of the Act. Thereafter he filed a petition before the authority under Payment of Gratuity Act, viz., original authority, Assistant Commissioner, who dism issed the claim of the third respondent. Against which he filed an appeal to the Joint Commissioner of Labour, Madurai, who has passed the order which is now impugned in this writ petition. In the meanwhile, the petitioner herein raised a dispute as to whether the third

respondent is entitled to the benefits under the settlements. That was referred to the Government by the petitioner as a dispute before the Labour Court, Madurai, which is now pending in I.D.No.115 of 1999.

3. Learned counsel appearing for the petitioner has submitted that the same issue was raised as to whether the third respondent is entitled to the benefits of the settlement arrived at under Settlement 12(3) of the Act, is pending in I.D.No. on the reference made by the Government. It has also been brought to the notice of the Government by way of filing counter before the Joint Commissioner. But the Joint Commissioner instead of awaiting verdict in I.D.No.115 of 1999, has decided the sam e issue as to whether the third respondent is entitled to the benefits of the gratuity as found in the settlement under Section 12(3) of the Act and he has also decided in favour of the third respondent. This is not legally sustainable inasmuch as the same issue is pending before the Labour Court in I.D.No.115 of 1999.

4. Mr.P.L.Narayanan, learned counsel for the third respondent has submitted that the impugned order of the Government is valid and the gratuity was paid even to the managerial staff i.e. to the persons who are holding the managerial post in with settlement under Section 12(3) of the Act. Therefore, the petitioner had accepted settlement under Section 12(3) of the Act. It is an oral agreement which was acted upon by the petitioner. The benefits due under the settlement under Section 12(3) of the Act is also extended to the third respondent. Therefore, there is nothing illegal in the order passed by the Joint Commissioner in the impugned order.

5. Considering that the petitioner is an organisation, the Madurai District Central Co-operative Bank, there cannot be any oral agreement between the petitioner and any other person whether its own manager or any other individual.

6. Counsel for the third respondent by way of reply states, that benefits have been given to some other persons and at this point this Court cannot go into the details on merits. The benefits due under Section 12(3) of the Act is available ons like third respondent.

7. When the same is pending verdict under the reference made by the Government in I.D.No.115 of 1999 before the Labour Court, the Joint Commissioner should not have decided and he should have waited for the verdict of the lower Court in I.D 1999 and pass orders subsequent to the verdict given by the lower court. In the circumstances, impugned order is set aside as the Joint Commissioner had no authority to decide the issue pending before the Labour Court. He should await for the verdict in I.D.No.115 of 1999. Therefore, the matter is remitted back to the Joint Commissioner. The Joint Commissioner shall wait for the verdict in I.D.No.115 of 1999 by the Labour Court and pass appropriate orders thereafter. Considering the fact that th e I.D. is of the year 1999, it may be disposed of expeditiously inasmuch as the third respondent has already retired, the Labour Court is directed to dispose of the I.D. within a period of three months from the date of receipt of a copy of this order.

Index: Yes.
Internet : Yes.

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To
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